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# Supreme Court of the United States

OCTOBER TERM, 1968.

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No. [redacted]97

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MARGARET THOMAS POWE and WILLIAM A. POWE,
Petitioners,

versus

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.**

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M. M. ROBERTS,
P. O. Box 870,
Hattiesburg, Mississippi.

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1968.

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No. .....

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MARGARET THOMAS POWE and WILLIAM A. POWE,
Petitioners,

versus

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

---

# PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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Your petitioners Margaret Thomas Powe and William A. Powe of Hattiesburg, Forrest County, Mississippi, respectfully pray that a writ of certiorari be issued to review the decisions of the United States Court of Appeals for the Fifth Circuit entered on December 18, 1967, on petition for review of decision of the Tax Court of the United States (Mississippi case) and on petition for rehearing en banc entered on February 23, 1968, which affirmed the Tax Court of the United States, respecting federal gift tax liability for the year 1958.

## I.

## JURISDICTION.

Jurisdiction to review this case on petition for writ of certiorari is conferred upon this Court by 28

U.S.C., Section 1254 (1), and Supreme Court Rule 19(1)(b).

## II.

## OPINIONS BELOW.

The memorandum findings of fact and opinion of the Tax Court of the United States are not officially reported; but they appear in the record (R. 20-71). This petition concerns only those portions of said opinion relating to inclusion by the Court of mineral valuation factors when determining the value of lands found by the Tax Court, and limited part of the memorandum of findings of facts and opinion, with decision of the Tax Court is attached hereto as Appendix "A".

The opinion of the Court of Appeals for the Fifth Circuit affirming the Tax Court appears in the official reporter system (389 F. 2d 46, 47), and a copy of the opinion is attached hereto as Appendix "B"; and a copy of the judgment of the Court of Appeals for the Fifth Circuit is attached hereto as Appendix "C"; and a copy of the order of the Court of Appeals for the Fifth Circuit denying petition for rehearing en banc is attached hereto as Appendix "D".

## III.

## STATEMENT OF GROUNDS FOR JURISDICTION.

The grounds on which jurisdiction of this Court are invoked are:

(a) That the Circuit Court of Appeals for the Fifth Circuit has rendered a decision in conflict with the decision of another Court of Appeals on the same subject matter; and (b) said Court has decided an important question of federal law which has not been, but which should be, settled by this court; and (c) said Court has rendered its opinion in conflict with applicable decisions of this Court; and (d) said Circuit Court of Appeals has departed from the accepted and usual course of judicial proceedings and has followed the United States Tax Court in the cause to justify and require the exercise of the power of supervision of said courts; and pursuant to Supreme Court Rule 23(b), petitioners further say:

(i) The judgment of the United States Court of Appeals for the Fifth Circuit sought to be reviewed was dated and entered December 18, 1967.

(ii) Said Court entered order respecting a rehearing dated and filed February 23, 1968; and less than 90 days has passed since the entry of the order denying petition for rehearing en banc.

(iii) The statute primarily involved is 26 U.S.C. (1954 USC), Section 2512 which provides that if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. Our witnesses denied considering mineral values; but the Tax Court fixed the value of associated minerals and the Court of Appeals on review of the Tax Court decision declined to reverse.

## IV.

## QUESTION PRESENTED.

The only question presented by this subject is that of whether the Tax Court improperly considered minerals as a valuation factor for lands, in the absence of any evidence respecting such factor for the gift date, said value not being a proper subject of judicial notice.

## V.

## STATUTES INVOLVED.

The statute affecting this determination is found in the provisions of 26 U.S.C. (1954 IRC) Section 2512. So far as here pertinent, that provision is:

"Sec. 2512—Valuation of Gifts.

(a) If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift."

## VI.

## STATEMENT OF CASE.

Petitioners created an irrevocable trust on April 22, 1958, for named beneficiaries, and transferred various properties as a gift to the trustee for the designated beneficiaries. The trust and the transfers were executed and delivered by the petition-

er husband, with the wife consenting. They both filed gift tax returns for the 1958 gifts, although there is stipulated between the parties that there is only one gift tax liability.

The properties transferred in gift to the trust included nine parcels of acreage, and the value of those tracts is source of the only issue presented. The Tax Court fixed the value as $42,609.00 less than the value determined by respondent in his statutory notice of deficiency, but $157,270.00 more than reported by petitioners in the returns.

The parties, on the trial before the Tax Court, advised the Court that there was no issue of mineral values respecting the subject lands, and all the witnesses testifying on valuation expressly denied considering mineral values when fixing their determination of values for the lands. (R. 294-95: All counsel for respondent, and colloquy with the Court at R. 296-98; R. 293-97: Revenue Agent Boone, the examining officer; R. 538-39, 598-99: Engineer Revenue Agent Huff; R. 221: Bryant, land purchaser and manager for petitioners; R. 382: Guthrie Consulting forester for petitioners; R. 302-357, 325, Vardaman, consulting forester for the petitioners; R. 451, Cranston, consulting forester for petitioners.)

The Court, in its opinion, fixed the value of the lands considering the value of associated minerals. (Appendix A: R. 63-67.)

The Court of Appeals, on review of the Tax Court decision, declined to reverse for that claimed error, stating that the decision had support in the record, and this in the absence of testimony relating thereto.

## VII.

## REASONS FOR GRANTING THE WRIT.

1. Petitioners, for the first time when the Tax Court opinion was released, learned that the Court had considered mineral values, while all the evidence denied that value of the minerals at the gift date had been considered.

The opinion of the Tax Court shows obviously that the opinion considered the fact of holding property a fact of determinable value at a date certain, namely, the gift date. While the record supports the fact of mineral rights held, there is no evidence as to their value. Contrarily, such evidence is specifically denied.

When petitioners were faced for the first time in the opinion with this issue, and were denied remand on review, they lost their last opportunity to meet an issue from outside the record.

2. The decisions below are in conflict with the requirements announced by this Court for such cases. *Commissioner of Internal Revenue v. Joseph Sunnen*, 68 S.Ct. 715, 724 (333 U.S. 591, 607) 92 L. Ed. 898, 911 (1948). Whereas, this Court declared that Tax Court

decisions, to be sustained, must be firmly grounded in the evidence and not inconsistent with the law. The Tax Court opinion on this issue had neither evidence nor legal consistency to support it.

The Court of Appeals, when affirming this issue, decided in conflict with its own announced rules for affirming. See *Carlton v. Commissioner of Internal Revenue*, 190 F. 2d 183, 185 (C.C.A. 5, 1951). Whereas, the Court had declared that valuation for gift tax purposes must be related to the facts, and unsupported opinion as to what the facts might have been at a critical date will not support post fact valuations. The opinion below had no critical date (the gift date) facts in the record. Furthermore, the reviewing Court later announced that Tax Court decisions reaching conclusions on facts or factors contrary to the weight of the evidence were reversible. Nevertheless, it affirmed this decision which forthrightly stated that it was relying on factors as to mineral values not of the gift date.

The affirming opinion below is in conflict with the decisions for the United States Court of Appeals for the Eighth Circuit, and from the United States Court of Claims. We refer to these cases.

In the Eighth Circuit case, it was held that the trier of facts may substitute bench judgment for the evidence, under proper circumstances, but that the record must disclose knowledge and experience of the trier relative to the subject matter. *Cullers v.*

*Commissioner of Internal Revenue*, 237 F. 2d 611, 616 (C.C.A. 8; 1956—Op. 7, 8). The Court has held that value must result from reasonable judgment having its basis in a proper consideration of all relevant factors. *Havemeyer v. United States*, 59, F. Supp. 537 (103 Ct. Cl. 564—1945) cert. den. 66 S. Ct. 139 (326 U.S. 759) 90 L.Ed. 456.

Absent a record showing of local knowledge in the trial court, and absent the relevant factor of value at the gift date. The decision below is in conflict with those of other competent jurisdictions.

3. Petitioners concede that the evidence shows consideration for the subject minerals when the same were acquired at times ranging from one year to thirteen years before the gift date. They concede also that minerals under one tract had been leased continuously from their acquisition dates. Petitioners note though that the record also shows minerals under the two most recent purchases (Williams and Fornea tracts) were condemned as worthless before the gift date by dry hole drilling. (The trial court valued the two latter tracts by consideration of timber environment only.)

The mineral values considered by the trial court for the six tracts here involved (from the total of nine tracts in the gift) are not shown in the opinion of the Tax Court. The aggregate reduction by the Tax Court as to value of certain tracts is $42,609.00 less than that in the statutory notice. But, if all such reduction be attributed to land value alone (disregarding the fact that some of it was on timber value) the

average value per acre would be in excess of $20.00. However, the Tax Court had found the average value per acre for land to be $15.00 to $20.00 under optimum conditions. (R. 43.) Where the final land value exceeds the value specifically found, some increase was obviously attributed to mineral value, but the record shows no mineral values at the gift date. This state of the case leaves the decision squarely in conflict with the precise date requirement of *Section 2512, supra.*

## CONCLUSION.

It is clear from that shown in the foregoing that the consideration of mineral values has no support in the record. Clearly, also, is the fact that the decision below is in direct conflict with the law and with the teaching from the judiciary as to how the law ought to be properly interpreted and applied.

If there were one relevant fact in the record as to mineral value for the subject lands at the gift date, petitioners are doubtful that this petition would be justified. Since the record is barren of such necessity, they are encouraged to seek review. They are without a forum, except this one, on an issue they could not anticipate, were firmly informed did not exist, and were judged on a surprise appearing in the decision for their first knowledge of it. Petitioners ought to have reasonable opportunity to test the legal sufficiency of consideration of minerals without evidence of their gift date value, but have been denied that they do not know the amount of such value as-

serted against them for the first time in the decision, and they say certiorari should be granted.

Wherefore, petitioners seek the review on basis of the record.

Respectfully submitted,

M. M. ROBERTS,
P. O. Box 870,
Hattiesburg, Mississippi.

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**PROOF OF SERVICE.**

I, M. M. Roberts, of attorneys for petitioners and a member of the Bar of the Supreme Court of the United States hereby certify that I have caused to be delivered three copies of the foregoing Petition for Writ of Certiorari to the Solicitor General of the United States, Washington, D. C. and have mailed, postage prepaid, to Honorable Mitchell Rogovin, Assistant Attorney General of the United States, and to Lee A. Jackson, Meyer Rothwacks, and Deene R. Goodlaw, Attorneys, Department of Justice, Washington, D. C. 20530, copies of the foregoing Petition for Writ of Certiorari on this .... day of May, A.D., 1968.

M. M. ROBERTS,
P. O. Box 870,
Hattiesburg, Mississippi,
Attorney for Petitioners.

## APPENDIX "A".

Petitioner argues that the lands should be valued without consideration of the mineral rights therein which petitioner transferred to the trust. We do not agree with petitioner in this regard. The evidence shows that whatever mineral rights petitioner had in these lands and transferred to the trust were not included either in petitioner's gift tax return or respondent's notice of deficiency in the separate valuation of mineral rights but that those valuations included only mineral rights, the surface rights of which were not transferred by petitioner to the trust. Therefore, in valuing these lands we have considered the fact that petitioner owned and transferred to the trust all the mineral interests in the Clayton and Walter Mitchell tract and a part of the mineral interests in the Barron, Sartin, and Stevens tracts. When Bryant purchased the Clayton and Walter Mitchell tract for petitioner in 1945 he considered there was a value in mineral rights in the property in excess of the amount he paid for the land. In arriving at the fair market value of this tract we have given consideration to the fact that there were some trees growing on the land which were below the merchantable size as of April 22, 1958, as well as merchantable timber on the land.

Respondent in his argument has assumed that there would be approximately 10 percent less merchantable timber on the Clayton and Walter Mitchell tract on April 22, 1958, than there was on that land

when the timber was cut in 1960 and 1961. Petitioner argues that there would be approximately 20 percent less timber on April 22, 1958, than when the timber was cut. Both parties accept the fact that the rate of growth of the type of timber growing on the lands which were cut over in 1960 and 1961 was approximately 5 percent a year. The evidence shows that the main growth occurred in the spring and summer. From the dates of receipts for timber, it is apparent that the timber was not cut ratably over the entire period from February 1960 to August 1961, but that most of it was cut between February 1960 and March 1, 1961. We have therefore considered that the growth on the average between the date the properties were transferred to the trust on April 22, 1958, and the date the timber was cut was approximately 12-1/2 percent and have estimated the quantity and value of merchantable timber on the Clayton and Walter Mitchell tract and other properties on which cutting took place accordingly.

We have also considered the testimony of certain of petitioner's expert witnesses that bare timberlands without any timber growth and without any development or reseeding work, if being purchased for timber growing uses only, without consideration to mineral values or other possible uses for the land, would have a value in the area in which petitioner's lands were located of from $5 to $10 per acre. However, we have not considered that this amount constitutes the fair market value of lands in which all or a portion of the mineral rights were transferred by

petitioner to the trust and which contained young growth in most instances when transferred to the trust and which had other potential uses when transferred to the trust. We have recognized that the value to be placed on the lands should give recognition to the young growth and the mineral interests which were transferred to the trust as well to the bare land value. We have given consideration to all of these factors in the land values we have determined for the Clayton and Walter Mitchell, Barron, Stevens, and Sartin tracts, as well as to our conclusion as to a proper estimate of the merchantable timber on those tracts and the value thereof when they were transferred to the trust on April 22, 1958. In our valuation of the Clayton and Walter Mitchell, J. O. Barron, Stevens, and Sartin tracts we have considered the testimony of the expert witnesses for both petitioner and respondent. To a large extent the variations in their testimony were with respect to the merchantable timber and young growth on the land on April 22, 1958, and our conclusion from all this testimony is reflected in our ultimate finding as to the value of each of these tracts.

A substantial portion of the testimony in the record deals with the Gavin tract. Petitioner contends that this was very poor timber growing land and that at the time it was transferred to the trust it had timber growth which would not produce more than one-half a cord of pulpwood an acre and no other merchantable timber. Petitioner's witness testified that the young growth on this land was negligible.

The record shows that petitioner owned one-fourth of the mineral interests under the Gavin tract and that in 1954 petitioner had paid $10 an acre for this property. It also shows that this land was well located as to roadways so that it had potential uses for purposes other than timber growing. The evidence also shows that Bryant, when he purchased this land for $10 an acre in 1954, had considered that the one-fourth mineral rights obtained were worth approximately that amount. Petitioners, on their returns, valued this property at $25 an acre for a total value of $82,000. All of petitioner's witnesses including Bryant, indicated that they considered that the Gavin tract had merchantable timber in operable quantities. Considering all of the testimony with respect to this tract we have concluded that its fair market value at April 22, 1958, is the amount of $82,000 as used by petitioner in arriving at the value reported on his gift tax return.

The testimony is uniform that the timber on the Black and Hathorn tract was of good quality both as to merchantable timber and young growth. There was at least $10,000 in value of sawtimber on this land as of April 22, 1958, and in addition some pulpwood and a good stand of young growth. Petitioner owned no mineral rights in the Black and Hathorn tract and transferred none to the trust. Considering all of these factors we have determined that the fair market value of the tract when it was transferred to the trust was $41,000.

The last issue concerns the portion of the value of the properties transferred to the trust which should be allocated to the trust created for Bryant. Both parties recognize that there was consideration for the transfer to Bryant and that this transfer did not constitute a gift. Both parties also recognize that the value of the total properties transferred to the trust should be reduced by the value of the properties allocable to the trust created for Bryant. The issue is now to arrive at this value.

## DECISION OF THE COURT.

(Title Omitted—No. 5715-63) (Filed: June 3, 1966)

Pursuant to the opinion of the Court filed February 24, 1966, and the agreed computation of the tax liability filed by the parties; and incorporating herein the facts recited in the computation as the findings of the Court, it is

ORDERED and DECIDED: That there is a deficiency in gift tax due from the petitioner for the year 1958 in the amount of $51,968.70.

s/ IRENE F. SCOTT
Judge.

(Seal)

Entered:
ENTERED JUN 7 1966

## APPENDIX "B".

**IN THE**
**UNITED STATES COURT OF APPEALS**
**FOR THE FIFTH CIRCUIT**

**No. 24299**

**MARGARET THOMAS POWE, WILLIAM A. POWE,**
**Petitioners,**

**versus**

**COMMISSIONER OF INTERNAL REVENUE,**
**Respondent.**

**Petition for Review of Decision of the Tax Court of the United States (Mississippi Case.)**

(December 18, 1967.)

Before RIVES and GODBOLD, Circuit Judges, and HUGHES, District Judge.

PER CURIAM: On April 22, 1958, petitioners, husband and wife, created an irrevocable trust for the benefit of various members of their family. The property conveyed, among other items consisted of nine parcels of land. A gift tax return, filed for the year 1958, reported the fair market value of the nine parcels as $326,630.00. The Commissioner of Internal Revenue, in a deficiency notice, increased the valuation to $664,179.00. In a hearing before the Tax Court, following the deficiency assessment the total value of the land involved was fixed at $531,970.00. We affirm.

The principle questions involved are: (1) whether the Tax Court is limited to making adjustments in the value of the particular items included in the deficiency notice and (2) whether the Tax Court as valuation is supported by substantial evidence.

The Commissioner's deficiency notice to petitioners did not include the mineral interests as a separate item in determining the value of each of the tracts of land involved. It is petitioners' contention that for this reason the Tax Court should have valued the lands without consideration of the minerals therein. In making its re-determination of tax liability the Tax Court is free to consider all elements reflected in the record. In *Berstein v. Commissioner* 267 F.2d 879 (1959) this Court, in approving the Tax Court's decision, said at p. 881:

> "The taxpayer takes the position before us that the Tax Court's findings and decision depart from and are not responsive to the issues as they were submitted to the Tax Court. . . It is immaterial whether the Commissioner proceeded upon a wrong theory in determining the deficiency, and the taxpayer has the burden of showing that the assessment is wrong on any proper theory."

While not of significance it might be pointed out that the value found by the Tax Court in the case of each piece of land was less than set out in the deficiency notice even with the inclusion of the mineral interests in the lands conveyed.

With reference to the second and principal question the Tax Court's valuation of the lands involved is supported by substantial evidence. In determining the value of each tract the Court recognized the mineral interests, timber, and young growth as well as the bare land. It was, however, not necessary to list the value of each of these items. The Court's findings have basis in the record, are detailed as to each tract of land and its conclusions are well reasoned.

The decision is

AFFIRMED

## APPENDIX "C".

## UNITED STATES COURT OF APPEALS
## FOR THE FIFTH CIRCUIT

**October Term, 1967**

**No. 24299**

**D. C. Docket No. CA 5715-63 and No. 5716-63**

**MARGARET THOMAS POWE, WILLIAM A. POWE,**
**Petitioners,**

**versus**

**COMMISSIONER OF INTERNAL REVENUE,**
**Respondent.**

**Petition for Review of Decision of the Tax Court of the United States (Mississippi Case.)**

Before RIVES and GODBOLD, Circuit Judges, and HUGHES, District Judge.

### JUDGMENT

This cause came on to be heard on the petition of Margaret Thomas Powe, William A. Powe, for review of a decision of the Tax Court of the United States, and was argued by counsel:

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged and decreed by this Court that the decision of the Tax Court in this cause be, and the same is hereby, affirmed.

December 18, 1967

Issued as Mandate: MAR 4 1968

## APPENDIX "D".

Filed Feb. 23, 1968.

**IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

**No. 24299**

**MARGARET THOMAS POWE, WILLIAM A. POWE,**
**Petitioners,**

**versus**

**COMMISSIONER OF INTERNAL REVENUE,**
**Respondent.**

**Petition for Review of a Decision of the Tax Court of the United States. (Mississippi Case.)**

**ON PETITION FOR REHEARING EN BANC**

(February 23, 1968)

Before HONS. RIVES and GODBOLD, Circuit Judges, and HUGHES, District Judge.

PER CURIAM: The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, Rule 25(a), subpar. (b), the Petition for Rehearing En Banc is DENIED.

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# In the Supreme Court of the United States

OCTOBER TERM, 1968

MARGARET THOMAS POWE AND WILLIAM A. POWE,
PETITIONERS

*v.*

COMMISSIONER OF INTERNAL REVENUE

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ERWIN N. GRISWOLD,
*Solicitor General,*
MITCHELL ROGOVIN,
*Assistant Attorney General,*
WILLIAM A. FRIEDLANDER,
CAROLYN R. JUST,
*Attorneys,*
*Department of Justice,*
*Washington, D.C. 20530.*

# In the Supreme Court of the United States

OCTOBER TERM, 1967

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No. 1433

MARGARET THOMAS POWE AND WILLIAM A. POWE,
PETITIONERS

*v.*

COMMISSIONER OF INTERNAL REVENUE

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

---

**MEMORANDUM FOR THE RESPONDENT IN OPPOSITION**

---

The sole question before this Court is one of fact—whether the court below correctly affirmed the Tax Court's valuation, for federal gift tax purposes, of nine parcels of real estate and appurtenant mineral interests that petitioner conveyed on April 22, 1958, to an irrevocable trust (R. 21–22). On his gift tax return filed for 1958, petitioner [1] reported the fair market value of the land as $326,630 (R. 32–33). The Commissioner in his notice of deficiency increased this valuation to $664,179 (R. 52). The Tax Court determined a valuation of $531,970, *Powe* v. *Commissioner,*

[1] William A. Powe is referred to herein as petitioner. His wife, Margaret Thomas Powe, also signed a gift tax return



309-750—68

decided February 24, 1966 (P-H Memo T.C., par. 66,040) (R. 53),[2] and the Court of Appeals for the Fifth Circuit affirmed (Pet. 16–18).[3]

The decision is correct, and involves neither a conflict of decisions nor any other matter warranting further review.

1. The Tax Court did not err when it considered, in finding the proper value, sub-surface mineral rights that the Commissioner's notice of deficiency had not taken into account in determining the value of the tracts. A taxpayer must show that a deficiency is wrong on any proper theory. *E.g., Reinecke* v. *Spalding,* 280 U.S. 227; *Bernstein* v. *Commissioner,* 267 F. 2d 879 (C.A. 5). Thus in making its redetermination of tax liability, the Tax Court may consider any and all relevant evidence and revise the Commissioner's determination up or down as the record warrants. Cf. Section 6214(a) of the Internal Revenue Code of 1954.

2. Petitioner was not, as he contends (Pet. 6), faced with the issue of inclusion of the mineral rights for the first time in the Tax Court's opinion. It was clear at trial that the issue was in the case (R. 299–300). The Commissioner's brief in the Tax Court argued the point (pp. 8, 10, 12, 14–16, 17–18, 27, 32–53 of

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in 1958, and each consented to be considered as donor of one-half of the gift. (R. 21.) ("R" refers to the printed record in the court of appeals.)

[2] The appendix to the petition contains a small excerpt from the Tax Court's opinion. The full opinion is at R. 20–71.

[3] The opinion of the court of appeals is now reported at 389 F. 2d 46.

that brief), and petitioner argued it in his reply brief, filed prior to issuance of the Tax Court's opinion. At no time did petitioner request a continuance, or, after the opinion was handed down, a rehearing.[4]

3. Contrary to petitioner's contention (Pet. 5), there was ample evidence to support the Tax Court's findings, including specific testimony that the lands had mineral value and what those values were.[5] Petitioner does not deny that the underlying mineral rights had value at the time of the 1958 transfer. Therefore, it was proper for the Tax Court to make the best approximation it could of the value, including the appurtenant mineral rights, from the available evidence. See *Helvering* v. *Safe Deposit Co.*, 316 U.S. 56, *Helvering* v. *Taylor*, 293 U.S. 507; *Guggenheim* v. *Helvering*, 117 F. 2d 469 (C.A. 2).

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[4] Petitioner errs in stating (Pet. 5) that the Commissioner conceded that the mineral values of the tracts were not to be included in the valuation of the properties; the supporting citation is to testimony related to mineral rights under different land parcels (R. 32, Item I–(c)).

[5] Mr. Bryant, who bought these parcels for the taxpayer (R. 22, 136, 239–241), testified that he tried to buy tracts for the value of the minerals and standing timber alone so that he would get the surface rights for nothing (R. 136). In fact, he bought the Fornea and Williams tracts primarily for mineral interests obtained. (R. 525.) Of the $35 per acre paid for the Sartin tract, $12.50 was for the 40 percent mineral interest purchased with the land. (R. 138, 219.) The $20 paid for the Barron tract included all mineral leases on most of the land. (R. 138.) He considered the mineral interest alone worth more than $16 per acre paid for the Clayton and Walter Mitchell tracts.

In the court below petitioner accepted the Tax Court's findings (R. 53) with respect to three of the nine tracts (Pet. Br. in Fifth Circuit, p. 11). With respect to all tracts, including the other six, the Tax Court's opinion shows that it gave full consideration to and carefully balanced conflicting evidence as to land costs, timber growth, and mineral rights.[6] There is no occasion for future review of these factual findings. *A. & P. Tea Co.* v. *Supermarket Corp.*, 340 U.S. 147, 153–154.

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[6] Portions of the record that the Tax Court considered in support of its valuation include the following:

*Tract*

Clayton & Walter Mitchell: R.137, 140–143, 172–173, 220–222, 240–241, 246–255, 272, 336–337, 344–345, 349–357, 361–362, 367, 379–383, 396–397, 405–412, 435–436, 466–474, 476–482, 536–545; Exs. B pp. 7–8, FF through WW.

Barron: R.138, 139, 143, 145, 149, 173, 222–223, 240–241, 252, 255, 272, 545–548; Exs. B p. 7, E through H.

Stevens: R.148, 173–174, 222, 240, 252, 255, 269–270, 397, 412–420, 461–464, 505–507, 550–553; Exs. B p. 8, W, X, Y, 3, 21, 22, 29.

Sartin: R.138, 143, 149, 173, 219–220, 223–226, 240, 255–268, 557–559; Exs. B p. 7, I, J, K, BBB.

Black & Hathorne: R. 138, 139, 148, 149, 150–152, 175, 179, 191–196, 200–202, 207–208, 239–240, 383–384, 423–431, 511–513, 559–565; Exs. AA, 6, 27.

Fornea: R.137, 274–276, 524–525, 568–575; Exs. D, BB, CC, BBB, 1-ZZ.

Lee Estate: R 131–137, 143, 548–549, 603, Ex. Z.

Gavin: R.94, 98, 109–115, 137, 139–140, 150, 152–168, 178–180, 204–206, 240, 269, 367–368, 398–405, 554–557; Exs. L through V, Z.

Williams: R. 134–137, 274–277, 525, 565–569; Exs. D, L, M, P, Q through V, DD, EE, BBB, 4, 5, 1-ZZ.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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